

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
June 21, 2012**

Members Present

Bill O'Brien, Chairman
Jack Lessard (Alternate)
Vic Lessard
Tom McGuirk
Ed St. Pierre

Others Present

Joan Rice, Secretary

Chairman O'Brien called the meeting to order at 7:00 p.m.

Chairman O'Brien introduced the members of the Board.

The Pledge of Allegiance was said.

PETITION SESSION

22-12 ... The petition of Five J Street Realty Trust, Ninety-One Ocean Blvd. Realty Trust, Eighty-Nine Ocean Blvd. Realty Trust, Eighty-Three Ocean Blvd. Realty Trust for property located at 83, 89, and 91 Ocean Blvd. and 5 J Street through Green and Company seeking relief from Article XI, Section 11.5a to place a temporary wheeled sales/construction trailer upon the property initially for the purpose of generating interest and sales for the project before and during and as a construction headquarter during construction. This property is located on Map 293, Lot 8-1, Map 290, Lot 146-1, Map 290, Lot 145-1, Map 290, Lot 144 and in a BS Zone.

At this time Mr. McGuirk stepped down from the Board.

Attorney Peter Saari, Casassa & Ryan, and Mike Green, Petitioner, came forward. Attorney Saari said the trailer would be placed on the site for sales purposes. The purpose is to obtain as much interest in the project as possible. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. St. Pierre noted that there were two plans showing the trailer in two different locations. Attorney Saari said the location on Ocean Blvd. is the correct one.

Comments from the Audience

There were no comments from the audience.

Back to the Board

Mr. V. Lessard asked how long the trailer would be in this location and if it would be removed for the winter months. Attorney Saari said the petitioner would like to break ground at the end of the summer. The Planning Board has already approved the placement of the trailer. A permit from the Building Department is still needed.

Mr. St. Pierre said he could understand the need for a sales trailer because financing is tight.

Chairman O'Brien said a sales trailer has never been previously approved by the Board. If the application is granted, the variance goes with the land forever; we cannot put a restriction that it is only going to be here for a short time. Chairman O'Brien said if approval is granted he would like to see it stipulated that the sales trailer must be located exactly where it is shown on the drawing within the building footprint; thus, it must be removed from the property when the foundation is poured. Chairman O'Brien asked Attorney Saari why he did not apply for relief from 3.10. Attorney Saari stated that the Building Inspector said it was not required.

Mr. V. Lessard asked for permission for Mr. Tom McGuirk to speak from the Audience.

Mr. McGuirk, 95 Ocean Blvd., said the location of the trailer as requested is more acceptable to him now than where they wanted to put it two months ago.

Mr. St. Pierre asked if the intent was to only have the sales trailer at this location through the summer and then relocate it. Mr. Green replied that once construction begins the sales trailer will be reconfigured to a construction trailer, relocated, and removed from the site at the completion of construction.

Mr. V. Lessard said he would agree with the location on the plan and asked Mr. Green to sign and date the agreed to plan. Mr. Green agreed and signed the plan.

Moved by Mr. V. Lessard and seconded by Mr. St. Pierre, to grant Petition 22-12 per the Jones & Beach plan dated 4-2-08 and re-dated to 6-21-12. The sales trailer will be placed as specified on the plan; thus it has to be removed once construction is started.

Chairman O'Brien asked the Board if they felt the five criteria had been met. All members agreed that they had.

VOTE: 4-0-0. Motion passed unanimously.

At this time Mr. McGuirk stepped back up to the Board.

23-12 ... The petition of Nancy L. Walsh Revocable Trust, Nancy and James Walsh Trustees for property located at 18 Dover Avenue Unit F seeking relief from Article 1.3 and Article VIII, Section 8.2.3 requiring 40' setback to construct an in-the-roof deck on the east side roof where less than 40' is available. The proposed deck will be within the footprint of the front east side Duplex #18F. This property is located on Map 296, Lot 155 and in a RB Zone.

James and Nancy Walsh came forward. Mr. Walsh said they have a duplex on the ocean side and would like to put in an in-the-roof deck. All abutters are in favor of the project and letters of support have been submitted. Mr. Walsh went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. V. Lessard said the project seemed reasonable. Mr. J. Lessard agreed.

Mr. St. Pierre asked if the Walsh's owned the entire property. Mr. Walsh replied that they do.

Comments from the Audience

Stephen D'Urso, 13 Dover Ave., came forward. He said he felt this project would be an asset to the neighborhood.

Back to the Board

Chairman O'Brien asked the Board if they felt the five criteria had been met. Mr. V. Lessard, Mr. J. Lessard, Mr. McGuirk and Mr. St. Pierre agreed that they had. Chairman O'Brien said he would abstain because he thought this would be a 4th level and require relief from 4.4; but now understands he could do this to his own house.

VOTE: 4-0-1 (O'Brien). Motion passed.

Chairman O'Brien said Petitions 24-12 and 25-12 would be heard together.

24-12 ... The petition of Big Bernie Property Management L.L.C. through Happy House Amusements Inc. for the property located at 73 Ocean Blvd. seeking relief from Article IV, Section 4.5.1 to install outdoor "ATM" on the left side of the building. This property is located on Map 293, Lot 61 and in a BS Zone.

25-12 ... The petition of J Street Properties L.L.C. through Happy House Amusements Inc. for property locate at 139 Ocean Blvd. seeking relief from Article IV, Section 4.5.1 and 4.5.2

to install outdoor "ATM" on the right side corner of cement patio area abutting the building. This property is located on Map 287, Lot 42 and in a BS Zone.

Brendon McNamara, Applicant, came forward. He said these ATM's would benefit the public and business owners at Hampton Beach. The variances requested will allow the ATM's to be ADA compliant and easily accessible to the public.

Mr. McGuirk noted that on Petition 25-12, it should read "JST" properties. Chairman O'Brien said he would check with the Building Inspector regarding this change.

Mr. McNamara went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. V. Lessard asked about interfering with the sidewalk. Mr. McNamara said there will be no interference with the sidewalk.

Comments from the Audience on Petition 25-12

There were no comments from the Audience.

Back to the Board

Moved by Mr. V. Lessard and seconded by Mr. McGuirk, to grant Petition 25-12.

Chairman O'Brien asked the Board if they felt the five criteria had been met. All members agreed that they had.

VOTE: 5-0-0. Motion passed unanimously.

Comments from the Audience on Petition 24-12

There were no comments from the Audience.

Back to the Board

Mr. St. Pierre asked about the south setback to the property line.

Moved by Mr. V. Lessard and seconded by Mr. McGuirk, to grant Petition 24-12 providing a new sketch is submitted to the Building Department that reflects front and side setbacks.

Chairman O'Brien asked the Board if they felt the five criteria had been met. All members agreed that they had.

VOTE: 5-0-0. Motion passed unanimously.

BUSINESS SESSION

Adoption of Minutes

Moved by Mr. V. Lessard and seconded by Mr. St. Pierre, to approve the Minutes of May 17, 2012.

VOTE: 5-0-0. Motion passed unanimously.

Motion for Rehearing on Petition 18-12

Chairman O'Brien said we have two motions for re-hearing and a confidential letter from Attorney Gearreald in response to four questions asked by two members of the Board.

Mr. St. Pierre said he would like to see a rehearing. Public interest is certainly one of the criteria. He stated there may be some gray areas in the law. Mr. St. Pierre said he also questions hardship because no one else has an establishment of this type.

Mr. McGuirk said he does not think there was enough discussion regarding the law that allows this type of establishment to be operated in NH. Just because it is un-enumerated does not mean it is a built in hardship.

Mr. V. Lessard recalled a planning conference that he attended and the discussion that ensued on unnecessary hardship. He does not see a hardship. Chairman O'Brien said he has some issues with the application wording that need to be clarified.

Moved by Mr. St. Pierre and seconded by Mr. V. Lessard, to hold a rehearing on Petition 18-12 at the July 19, 2012 meeting at which time it will be first on the agenda.

VOTE: 5-0-0. Motion passed unanimously.

Proposed Letter to Planning Board

Chairman O'Brien presented his proposed letter from the Board to the Planning Board that seeks their support in refining un-enumerated procedures and updating certain aspects of the Town's Zoning Ordinance. Chairman O'Brien discussed the specifics of these aspects.

Mr. McGuirk said this letter covers all issues.

Mr. St. Pierre said the intent of the letter is good. It is important to have a relationship with the Planning Board. This will alleviate the need for some zoning cases.

It was the consensus of the Board to send the specified letter to the Planning Board.

Planning Board Grant

Chairman O'Brien said the Planning Board has applied for a \$50,000 grant to review and update zoning regulations for the downtown area. Jamie Stefan has requested that a member of this Board be a representative to this committee. Mr. McGuirk volunteered.

Petition 17-12

The Town Attorney's confidential letter of 17 May 2012 to the Board regarding Wally's Pub was discussed as to who may review.

Moved by Mr. St. Pierre and seconded by Mr. McGuirk, to require anyone wishing to review this letter to make an appointment with Kevin Schultz of the Building Department.

VOTE: 5-0-0. Motion passed unanimously.

Adjournment

There being no further business, Mr. McGuirk **moved**, seconded by Mr. V. Lessard, that the meeting be adjourned.

VOTE: 5-0-0. Motion passed unanimously.

The meeting was adjourned at 8:52 p.m.

Respectfully submitted,

Joan Rice
Secretary